

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 47 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DAHYALAL GOKALBHAI PATEL

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR YN OZA for Petitioner
MR TUSHAR MEHTA for Respondent No. 1
SERVED BY DS for Respondent No. 2
MR RD DAVE for Respondent No. 4, 5

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 09/04/96

ORAL JUDGEMENT

1n. Rule. Mr.Tushar Mehta appears for respondents No.1 & 3, Mr.R.D.Dave appears for respondent Nos 4 & 5. Respondent No.2 served. With the consent of learned advocates for parties matter is finally heard and decided today.

2. Petitioner is the original plaintiff who has challenged the legality and validity of the order passed by 3rd Extra Asst.Judge, Gondal in Civil Misc.Appeal No.83/95 whereby he dismissed the appeal and confirmed the order of the trial court below Exh.5 in Regular Civil Suit No.318/95. Ordinarily, in its revisional jurisdiction this court will be loath to interfere with the interlocutory orders when on concurrent findings of fact the trial court as well as the lower appellate court has refused the relief. However, in view of the peculiar facts situation obtaining before this court which takes the case within the reported decision of the Supreme Court in the case of ISHA MARBLES vs BIHAR STATE ELECTRICITY BOARD reported in 95(2) GLH 134 it has become necessary for this court to admit and finally decide this CRA.

3. The petitioner-plaintiff is the auction purchaser of the unit from the GSFC. He purchased the closed unit of M/s Smita Rolling Works in auction for an amount of Rs.6,75,000/- and the contract was executed between the plaintiff on one hand and the GSFC on the other hand on 27.4.95. As per one of the terms and conditions of the said contract being Condition No.13, the plaintiff was not bound to pay the difference M/s Smita Rolling Works, to the GEB as that condition No.13 was deleted from the printed contract. On the other hand, it was the case of the GEB that despite the decision of the Supreme Court in the aforesaid case there is an exception made in favour of them in that decision and if the specific stipulation is not made in the contract the transferee is also liable to pay the dues of the GEB. Mr.Tushar Mehta, Ld.advocate appearing for the GEB has submitted that when there is specific stipulation in the contract that the purchasing party will be liable to pay the GEB also shall have to make the payment of said dues and that decision of the Apex Court in the aforesaid case shall not apply.

4. In view of the aforesaid fact situation, this court directed the petitioner-plaintiff to implead the GSFC as party respondent and issued notice to newly added respondent. The newly added respondent was served and appeared through Mr.R.D.Dave. Mr.R.D.Dave submitted before this court that the original contract was sent to the purchasing unit and the copy of the contract is always retained by the GSFC. As per the record of the GSFC the printed condition No.13 from the contract is deleted on the date when the contract was entered into and he had shown said copy of contract to the court. However, the contract which was received by the purchaser

is also shown to the court and from it it becomes clear that the condition No.13 was deleted. It is in view of the aforesaid that the question shall have to be decided as to whether the petitioner-plaintiff was entitled to mandatory injunction as prayed for by them. In view of the decision of the Apex Court in the case of Isha Marbles vs Bihar State Electricity Board (supra) the position of law is well settled that the purchaser is not liable to discharge the liability of the firm owned in respect of its electricity dues. The court in that case was dealing with Section 24(1) of Indian Electricity Act, 1910. The court further held that insistence on the part of the Board to clear arrears as condition precedent to reconnection or supply of electric energy to such subsequent owner or occupier was illegal. The ratio of the aforesaid decision thus clearly applies to the fact situation obtaining before this court and this court is of the opinion that in view of the original contract as well as copy which is found from the record of the 4th respondent the say of the plaintiff shall have to be accepted that condition No.13 was specifically deleted at a time when the contract was entered and that the plaintiff has not undertaken the liability to discharge the electricity dues of the unit which was a closed unit when he purchased the said unit.

5. In view of the aforesaid factual as well as legal position the plaintiff was and is entitled to mandatory relief as prayed for and same is required to be granted.

6. In the result, judgments and orders of the two courts below are quashed and set aside and respondent Nos 1 to 4 are directed to restore electricity connection to the petitioner-plaintiff at the premises known as Smita Rolling Works which is situated at Shaper Veraval Industrial Zone and such connection shall be of 45 HP without insisting for reconnection charges on petitioner-plaintiff satisfying other terms and conditions of supply of electric energy. In case it is found that there was and is some relationship between the parties owning or running the Smita Rolling Works and the petitioner which could establish the transaction was sham or bogus it will be open to the GEB to act as per the observations of the Supreme Court. Rule is made absolute accordingly. No costs.

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